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UNITED STATES DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 OAKLAND DIVISION

ORACLE USA, INC., et al.,

Plaintiffs,

v.

SAP AG, et al.,

Defendants.

Case No. 07-CV-1658 PJH (EDL)

**STIPULATION AND PROPOSED  
 FORM OF JUDGMENT AND ORDER**

## **STIPULATION**

By and through their respective undersigned counsel, plaintiffs Oracle USA, Inc., Oracle International Corporation and Siebel Systems, Inc. (“Oracle”) and defendants SAP AG, SAP America, Inc. and TomorrowNow, Inc. (“Defendants”) (together, the “Parties”) hereby stipulate and agree to be bound as follows:

1. Following the first trial, the Court granted judgment as a matter of law. *See* Dkt. 1081 at 18-20; Dkt. 1088 (clarifying Dkt. 1081); Dkt. 1162 (denying motion to clarify and denying leave to move for reconsideration). The Court also granted Defendants’ new trial motion. *See id.* The Court ordered a new trial on actual damages, limited to lost profits and infringer’s profits, conditioned on Oracle rejecting a remittitur to \$272 million. Oracle rejected the remittitur (*see* ECF No. 1107) and the Court scheduled a new trial. *See* ECF Nos. 1108, 1190 and 1192. To save the time and expense of this new trial, and to expedite the resolution of the appeal, the Parties stipulate to entry of judgment in the amount of \$306 million, in the proposed form attached to this Stipulation as Exhibit A, which will be the Court’s final judgment in this matter (the “Stipulated Judgment”). Oracle contends that but for the limitations established by the Court’s rulings to date, Oracle’s recovery in a new trial would be greater than \$306 million.

2. The Stipulated Judgment shall constitute Judgment on all claims for relief under Rule 54(a) of the Federal Rules of Civil Procedure. The Parties reserve all appeal rights from the Stipulated Judgment, and each and every part thereof, including the right to appeal the Stipulated Judgment and to seek review of all otherwise reviewable orders, decisions and rulings in this proceeding, including without limitation: (a) orders entered prior to the November 2010 trial in this matter; (b) rulings of the Court during the course of the November 2010 trial; (c) the orders of the Court on Defendants’ motions for judgment as a matter of law and for a new trial following the November 2010 trial; (d) the orders of the Court on Oracle’s conditional motion for a new trial following the November 2010 trial; (e) the limitations imposed by the Court with respect to the new trial currently scheduled to commence on August 27, 2012; and (f) the Stipulated Judgment. The Parties further reserve the right to seek all appropriate appellate relief, including

1 without limitation reinstatement of the original \$1.3 billion judgment. The Parties agree that they  
2 each may appeal the Stipulated Judgment, and that nothing in this stipulation or the Stipulated  
3 Judgment waives any right of either party to appeal the Stipulated Judgment, seek review of any  
4 order, decision, or ruling entered in this proceeding, or seek otherwise appropriate appellate relief.

5         3. If the Stipulated Judgment is vacated or reversed on appeal, and a new final  
6 judgment is entered and all appeal rights are exhausted (the New Judgment), then if the New  
7 Judgment awards Oracle more than the monetary amount set forth in the Stipulated Judgment,  
8 Oracle may enforce the New Judgment in lieu of the Stipulated Judgment. If, however, the  
9 Stipulated Judgment is vacated or reversed on appeal, and, after all appeal rights are exhausted,  
10 the New Judgment awards Oracle less than the monetary amount set forth in the Stipulated  
11 Judgment, Defendants stipulate to make an additional payment in the amount of \$306 million  
12 minus the amount of the New Judgment. Defendants' promise to pay this difference between the  
13 Stipulated Judgment and a lesser New Judgment is joint and several among all three Defendants.

14         4. Oracle may not enforce either the Stipulated Judgment, the New Judgment, or  
15 Defendants' promise to pay the difference between the Stipulated Judgment and a lesser New  
16 Judgment, until 30 (thirty) days after the conclusion of all proceedings in this case, including any  
17 appeal(s) (including discretionary review by certiorari in the United States Supreme Court, if any)  
18 and new trial(s). No Defendant shall be required to post a supersedeas bond or provide other  
19 form of security to prevent enforcement during that time. The Parties intend Defendants' promise  
20 to pay the difference between the Stipulated Judgment and a lesser New Judgment to be  
21 enforceable under California contract law, and that promise is made in consideration of Oracle's  
22 agreement to these stipulated terms (including Oracle's compromise of its claim for lost and  
23 infringer's profits and its agreement that Defendants need not provide security to prevent  
24 enforcement of a judgment pending post-trial motions and appeals). For purposes of enforcing  
25 the contractual obligations under paragraphs three and four, Oracle and Defendants submit to  
26 jurisdiction and venue in the United States District Court for the Northern District of California .  
27  
28

1 IT IS SO STIPULATED AND AGREED.

2 Dated: August 2, 2012

JONES DAY

3 By: /s/ Tharan Gregory Lanier  
4 Tharan Gregory Lanier  
5 Attorneys for Defendants  
6 SAP AG, SAP AMERICA, INC., and  
TOMORROWNOW, INC.

7 In accordance with General Order No. 45, Rule X, the above signatory attests that  
8 concurrence in the filing of this document has been obtained from the signatory below.

9 Dated: August 2, 2012

BINGHAM McCUTCHEN LLP

10 By: /s/ Geoffrey M. Howard  
11 Geoffrey M. Howard  
12 Attorneys for Plaintiffs  
Oracle USA, Inc., Oracle International  
Corporation, and Siebel Systems, Inc.

13 **PROPOSED ORDER**

14 Based on the parties' stipulation, and good cause being shown, IT IS SO ORDERED. The  
15 Clerk of the Court is directed to enter the proposed form of judgment attached as Exhibit A as the  
16 Court's final judgment in this matter. All other existing dates and deadlines in this matter,  
17 including the August 27 trial date, are hereby vacated.

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19 IT IS SO ORDERED

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21 Dated: \_\_\_\_\_, 2012

22 By: \_\_\_\_\_  
23 Judge Phyllis J. Hamilton  
24 United States District Judge

# **EXHIBIT A**

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

ORACLE USA, INC., et al.,

Plaintiffs,

v.

SAP AG, et al.,

Defendants.

Case No. 07-CV-1658 PJH (EDL)

**AMENDED JUDGMENT**

Pursuant to the Parties' Stipulation, Proposed Form of Judgment and Proposed Order (filed August 2, 2012), Amended Trial Stipulation and Order No. 1 Regarding Liability, Dismissal of Claims, Preservation of Defenses, and Objections to Evidence at Trial (Dkt. No. 965), Additional Trial Stipulation and Order Regarding Claims for Damages and Attorneys Fees (Dkt. Nos. 961 and 969), Order Re Motions For Partial Summary Judgment (Dkt. No. 762), Order Granting Motion to Dismiss in Part and Denying It in Part (Dkt. No. 224), and Order Granting Defendants' Motion for JMOL, and Motion for New Trial; Order Denying Plaintiffs' Motion for New Trial; Order Partially Vacating Judgment (Dkt. No. 1081), IT IS HEREBY ADJUDGED AND ORDERED that:

- (1) JUDGMENT is entered against Defendant TomorrowNow, Inc. on Plaintiff Oracle International Corporation's claim for direct copyright infringement

and against Defendants SAP AG and SAP America, Inc. on Plaintiff Oracle International Corporation's claim for indirect copyright infringement. On these claims, Plaintiff Oracle International Corporation shall recover from Defendants SAP AG, SAP America, Inc. and TomorrowNow, Inc. ("Defendants"), jointly and severally in the amount of 306 million U.S. dollars (\$306,000,000 (US)), which is the entirety of the relief entered for these claims (not including the stipulation negotiated between the Parties regarding destruction of infringing materials).

(2) JUDGMENT is entered against Defendants on Plaintiffs Oracle USA, Inc., Oracle International Corporation, and Siebel Systems, Inc.'s ("Oracle," and together with Defendants, "the Parties") claims for past and future reasonable attorneys' fees and costs (including investigative costs) associated with Oracle's investigation and prosecution of its claims in this case, for which the Parties agreed that Oracle should recover, and has already been paid by Defendants, the amount of \$120 million (\$120,000,000).

(3) JUDGMENT is entered for Plaintiffs Oracle USA, Inc., Oracle International Corporation, and/or Siebel Systems, Inc., and against Defendant TomorrowNow, Inc. on all liability for all claims, including for violations of 18 U.S.C. §§ 1030(a)(2)(C), (a)(4), (a)(5)(i), (a)(5)(ii), and (a)(5)(iii) (the Federal Computer Fraud and Abuse Act) and California Penal Code §§ 502(c)(2), (c)(3), (c)(6) and (c)(7) (California's Computer Data Access and Fraud Act), breach of contract, intentional interference with prospective economic advantage, negligent interference with prospective economic advantage, unfair competition, trespass to chattels, unjust enrichment/restitution, and for an accounting, without separate monetary damages or monetary relief, including punitive damages, or additional

1 injunctive relief by way of these claims. The recovery on these claims is  
2 included in paragraph (2) above and no other damages or injunctive or other  
3 relief is awarded by way of these claims.

- 4 (4) JUDGMENT of dismissal with prejudice is entered as previously stipulated  
5 by the Parties, on all claims of Plaintiffs Oracle USA, Inc., Oracle  
6 International Corporation, and/or Siebel Systems, Inc. against SAP AG and  
7 SAP America, Inc., for alleged violations of 18 U.S.C. §§ 1030(a)(2)(C),  
8 (a)(4), (a)(5)(i), (a)(5)(ii), and (a)(5)(iii) (the Federal Computer Fraud and  
9 Abuse Act) and California Penal Code §§ 502(c)(2), (c)(3), (c)(6) and (c)(7)  
10 (California's Computer Data Access and Fraud Act), breach of contract,  
11 intentional interference with prospective economic advantage, negligent  
12 interference with prospective economic advantage, unfair competition,  
13 trespass to chattels, unjust enrichment/restitution, and for an accounting.  
14 (5) JUDGMENT of dismissal is entered, as previously ordered by the Court, on  
15 all claims brought by Oracle Systems Corporation, J.D. Edwards Europe  
16 and Oracle EMEA Limited.  
17 (6) Except as specified in paragraph (2) above, no costs are awarded.  
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22 Dated: \_\_\_\_\_, 2012

23 By: \_\_\_\_\_  
24 Judge Phyllis J. Hamilton  
25 United States District Judge  
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